



STATE LAW SUMMARY: Louisiana

The information below is provided for consumer educational purposes only. The statements contained herein are general statements of law, and there may be exceptions that are not set forth below. NRRDA does not suggest that any provision contained herein will or must apply to any specific issue or case. For legal information and advice for any particular matter, you are encouraged to consult a licensed attorney.

Statute of Limitations:

Personal Injury	One (1) year
Property Damage	One (1) year
Written Contract	Ten (10) years
Oral Contract	Ten (10) years
Contract Under Seal	Ten (10) years
Wrongful Death	One (1) year
Breach of Warranty	One (1) year
Fraud	One (1) year
Libel/Slander	One (1) year
Workers' Compensation	A claimant must file his claim for workers compensation benefits within: (1) one year from the date of the accident; (2) one year from the date of the last compensation payment for total disability or three years from the last payment of partial disability; or (3) one year from the time the injury develops if not immediately manifested, but, in any event, no more than two years after the accident.



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Service of Process:

Louisiana Code of Civil Procedure article 1201 provides:

A. Citation and service thereof are essential in all civil actions except summary and executory proceedings, divorce actions under Civil Code Article 102, and proceedings under the Children's Code. Without them all proceedings are absolutely null.

B. The defendant may expressly waive citation and service thereof by any written waiver made part of the record.

C. Service of the citation shall be requested on all named defendants within **ninety (90) days** of commencement of the action. When a supplemental or amended petition is filed naming any additional defendant, service of citation shall be requested within **ninety days (90)** of its filing. The defendant may expressly waive the requirements of this Paragraph by any written waiver. The requirement provided by this Paragraph shall be expressly waived by a defendant unless the defendant files, in accordance with the provisions of Article 928, a declinatory exception of insufficiency of service of process specifically alleging the failure to timely request service of citation.

Louisiana Revised Statute §13:3204 provides that in a suit against a nonresident, a certified copy of the citation or the notice in a divorce under Civil Code Article 102 and of the petition or a certified copy of a contradictory motion, rule to show cause, or other pleading filed by the plaintiff in a summary proceeding under Code of Civil Procedure Article 2592 shall be sent by counsel for the plaintiff, or by the plaintiff if not represented by counsel, to the defendant by registered or certified mail, or actually delivered to the defendant by commercial courier, when the person to be served is located outside of this state or by an individual designated by the court in which the suit is filed, or by one authorized by the law of the place where the service is made to serve the process of any of its courts of general, limited, or small claims jurisdiction.



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B. If service of process cannot be made on the nonresident by registered or certified mail or by actual delivery, the court shall order that service of process be made on an attorney at law appointed to represent the defendant pursuant to Code of Civil Procedure Article 5091.

C. Service of process so made has the same legal force and validity as personal service on the defendant in this state.

Deadline to File Answer:

Louisiana Code of Civil Procedure article 1001 provides that a defendant shall file his answer within fifteen (15) days after service of citation upon him, except as otherwise provided by law. The court may grant additional time for answering.

When an exception is filed prior to answer and is overruled or referred to the merits, or is sustained and an amendment of the petition ordered, the answer shall be filed within ten (10) days after the exception is overruled or referred to the merits, or ten (10) days after service of the amended petition.

Abandonment/Lack of Prosecution:

Louisiana Code of Civil procedure article 561 provides that an action is abandoned when the parties fail to take any step in its prosecution or defense in the trial court for a period of three (3) years.

This provision shall be operative without formal order, but, on ex parte motion of any party or other interested person by affidavit which provides that no step has been timely taken in the prosecution or defense of the action, the trial court shall enter a formal order of dismissal as of the date of its abandonment. A motion to set aside a dismissal may be made only within thirty (30) days of the date of the sheriff's service of the order of dismissal. If the trial court denies a timely motion



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to set aside the dismissal, an appeal of an order of dismissal may be taken only within sixty (60) days of the date of the sheriff's service of the order of dismissal. An appeal of an order of denial may be taken only within sixty (60) days of the date of the clerk's mailing of the order of denial.

Once abandonment occurs, no action by the plaintiff or inaction by the defendant can revive the abandoned action. Springer v. Louisiana Bd. of Registration, 929 So.2d 152, (La. App. 4th Cir. 2006).

Any formal discovery as authorized by this Code and served on all parties whether or not filed of record, including the taking of a deposition with or without formal notice, shall be deemed to be a step in the prosecution or defense of an action.

An appeal is abandoned when the parties fail to take any step in its prosecution or disposition for the period provided in the rules of the appellate court.

Class Actions:

One or more members of a class may sue or be sued as representative parties on behalf of all, only if:

- (1) The class is so numerous that joinder of all members is impracticable.
- (2) There are questions of law or fact common to the class.
- (3) The claims or defenses of the representative parties are typical of the claims or defenses of the class.
- (4) The representative parties will fairly and adequately protect the interests of the class.
- (5) The class is or may be defined objectively in terms of ascertainable criteria, such that the court may determine the constituency of the class for purposes of the conclusiveness of any judgment that may be rendered in the case.



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An action may be maintained as a class action only if all of the prerequisites mentioned above are satisfied, and in addition:

(1) The prosecution of separate actions by or against individual members of the class would create a risk of:

(a) Inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(b) Adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;
or

(2) The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

The matters pertinent to these findings include:

(a) The interest of the members of the class in individually controlling the prosecution or defense of separate actions;

(b) The extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(c) The desirability or undesirability of concentrating the litigation in the particular forum;

(d) The difficulties likely to be encountered in the management of a class action;

(e) The practical ability of individual class members to pursue their claims without class certification;



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(f) The extent to which the relief plausibly demanded on behalf of or against the class, including the vindication of such public policies or legal rights as may be implicated, justifies the costs and burdens of class litigation; or

(4) The parties to a settlement request certification under Subparagraph B(3) for purposes of settlement, even though the requirements of Subparagraph B(3) might not otherwise be met.

Certification shall not be for the purpose of adjudicating claims or defenses dependent for their resolution on proof individual to a member of the class. However, following certification, the court shall retain jurisdiction over claims or defenses dependent for their resolution on proof individual to a member of the class. La. Code Civ. Proc. Ann. art. 591

Only the true class action, and not hybrid or spurious class action of federal rule, is authorized in Louisiana. La. Code Civ. Proc. Ann. art. 591

Consumer Fraud Laws:

Louisiana Revised Statute § 51:1409 provides:

A. Any person who suffers any ascertainable loss of money or movable property, corporeal or incorporeal, as a result of the use or employment by another person of an unfair or deceptive method, act, or practice declared unlawful by R.S. 51:1405 (Unfair acts or practices; interpretation and rulemaking authority), may bring an action individually but not in a representative capacity to recover actual damages. If the court finds the unfair or deceptive method, act, or practice was knowingly used, after being put on notice by the attorney general, the court shall award three times the actual damages sustained. In the event that damages are awarded under this Section, the court shall award to the person bringing such action reasonable attorney fees and costs. Upon a finding by the court that an action under this Section was groundless and brought in bad faith or for purposes of harassment, the court may award to the defendant reasonable attorney fees and costs.



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B. Upon commencement of any action brought under Subsection A of this Section, the plaintiff's attorney shall mail a copy of the petition to the attorney general, and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the attorney general, but failure to conform with this Subsection shall not affect any of plaintiff's rights under this Section.

C. Any permanent injunction, judgment or order of the court made under R.S. 51:1407 and R.S. 51:1408 shall be prima facie evidence in an action brought under R.S. 51:1409 that the respondent used or employed a method, act or practice declared unlawful by R.S. 51:1405 or by rule or regulation promulgated pursuant thereto; provided, however, that this subsection shall not apply to consent orders or voluntary assurances of compliance.

D. If any person is enjoined from the use of any method, act, or practice or enters into a voluntary compliance agreement accepted by the attorney general under the provisions of this Chapter, such person shall have a right of action to enjoin competing businesses engaged in like practices.

E. The action provided by this section shall be prescribed by one year running from the time of the transaction or act which gave rise to this right of action.

Contrib/Comparative:

Louisiana Civil Code article 2323 provides that in any action for damages where a person suffers injury, death, or loss, the degree or percentage of fault of all persons causing or contributing to the injury, death, or loss shall be determined, regardless of whether the person is a party to the action or a nonparty, and regardless of the person's insolvency, ability to pay, immunity by statute, including but not limited to the provisions of R.S. 23:1032 (Exclusiveness of rights and remedies; employer's liability to prosecution under other laws), or that the other person's identity is not known or reasonably ascertainable. If a person suffers injury, death, or loss as the result partly of his own negligence and partly as a result of the fault of another person or persons, the amount of damages



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recoverable shall be reduced in proportion to the degree or percentage of negligence attributable to the person suffering the injury, death, or loss.

B. The provisions of Paragraph A shall apply to any claim for recovery of damages for injury, death, or loss asserted under any law or legal doctrine or theory of liability, regardless of the basis of liability.

C. Notwithstanding the provisions of Paragraphs A and B, if a person suffers injury, death, or loss as a result partly of his own negligence and partly as a result of the fault of an intentional tortfeasor, his claim for recovery of damages shall not be reduced.

Dram Shop Position:

The Louisiana legislature finds and declares that the consumption of intoxicating beverages, rather than the sale or serving or furnishing of such beverages is the proximate cause of any injury, including death and property damage, inflicted by an intoxicated person upon himself or upon another person.

Notwithstanding any other law to the contrary, no person holding a permit under either Chapter 1 or Chapter 2 of Title 26 of the Louisiana Revised Statutes of 1950¹, nor any agent, servant, or employee of such a person, who sells or serves intoxicating beverages of either high or low alcoholic content to a person over the age for the lawful purchase thereof, shall be liable to such person or to any other person or to the estate, successors, or survivors of either for any injury suffered off the premises, including wrongful death and property damage, because of the intoxication of the person to whom the intoxicating beverages were sold or served.

Notwithstanding any other law to the contrary, no social host who serves or furnishes any intoxicating beverage of either high or low alcoholic content to a person over the age for the lawful purchase thereof shall be liable to such person or to any other person or to the estate, successors, or



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survivors of either for any injury suffered off the premises, including wrongful death and property damage, because of the intoxication of the person to whom the intoxicating beverages were served or furnished.

No social host who owns, leases, or otherwise lawfully occupies premises on which, in his absence and without his consent, intoxicating beverages of either high or low alcoholic content are consumed by a person over the age for the lawful purchase thereof shall be liable to such person or to any other person or to the estate, successors, or survivors of either for any injury suffered off the premises, including wrongful death and property damage, because of the intoxication of the person who consumed the intoxicating beverages.

The insurer of the intoxicated person shall be primarily liable with respect to injuries suffered by third persons. The limitation of liability provided above shall not apply to any person who causes or contributes to the consumption of alcoholic beverages by force or by falsely representing that a beverage contains no alcohol. Louisiana Revised Statute § 9:2800.1

- Determination of the liability of an alcoholic beverage vendor to intoxicated patrons injured as a result of their own intoxication, or to third parties injured because of the negligence of intoxicated patrons, depends on a two-step analysis: first, the court must determine whether the defendant alcoholic beverage vendor is immunized by the provisions of the dram shop act; if the vendor is not entitled to immunity, the court must determine whether the vendor may be held liable under general negligence principles. Godfrey v. Boston Old Colony Ins. Co., 718 So.2d 441, (La. App. 4th Cir. 2008), rehearing denied, writ denied, 729 So.2d 563, (La. 2008).
- Statute providing immunity to establishments serving alcohol for any injuries or damages suffered off the premises due to a patron's intoxication requires compliance with only two laws: one requiring a statutory permit, and the one establishing the state's legal drinking age;



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it does not require a bar to comply with every statute, regulation, or ordinance governing the sale or service of alcohol. Roy v. Kyrles, Inc., 983 So.2d 975, (La. App. 3rd Cir. 2008).

- For the immunity provisions of anti-dram shop statute to apply to a particular bar owner, his agent, servant, or employee, there are several requirements: (1) the bar owner must hold a permit to sell alcoholic beverages; (2) the bar owner, its agent and servants or employees, sell or serve intoxicating beverages of either high or low alcoholic content to a person over the age for a lawful purchase thereof; (3) the purchaser thereof suffers an injury off the premises including wrongful death and property damage; (4) this injury or accident was caused by the intoxication of the person to whom the intoxicating beverages were sold or served. Zapata v. Cormier, 858 So.2d 601 (La. App. 1st Cir. 2003).

Indemnification Position:

Louisiana Civil Code article 2324 provides:

A. He who conspires with another person to commit an intentional or willful act is answerable, in solido, with that person, for the damage caused by such act.

B. If liability is not solidary pursuant to Paragraph A, then liability for damages caused by two or more persons shall be a joint and divisible obligation. A joint tortfeasor shall not be liable for more than his degree of fault and shall not be solidarily liable with any other person for damages attributable to the fault of such other person, including the person suffering injury, death, or loss, regardless of such other person's insolvency, ability to pay, degree of fault, immunity by statute or otherwise, including but not limited to immunity as provided in R.S. 23:1032, or that the other person's identity is not known or reasonably ascertainable



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- One who is held strictly liable for or constructively at fault for the tort of another and who is personally free from fault in injury may be entitled to indemnity. Shuff v. Southern Silica of Louisiana, 626 So.2d 541 (La. App. 3rd Cir. 1993).

Infant and Wrongful Death Settlements:

Wrongful Death Action

A. If a person dies due to the fault of another, suit may be brought by the following persons to recover damages which they sustained as a result of the death:

- (1) The surviving spouse and child or children of the deceased, or either the spouse or the child or children.
- (2) The surviving father and mother of the deceased, or either of them if he left no spouse or child surviving.
- (3) The surviving brothers and sisters of the deceased, or any of them, if he left no spouse, child, or parent surviving.
- (4) The surviving grandfathers and grandmothers of the deceased, or any of them, if he left no spouse, child, parent, or sibling surviving.

B. The right of action granted by this Article prescribes one year from the death of the deceased.

C. The right of action granted under this Article is heritable, but the inheritance of it neither interrupts nor prolongs the prescriptive period defined in this Article.

D. As used in this Article, the words “child”, “brother”, “sister”, “father”, “mother”, “grandfather”, and “grandmother” include a child, brother, sister, father, mother, grandfather, and grandmother by adoption, respectively.

E. For purposes of this Article, a father or mother who has abandoned the deceased during his minority is deemed not to have survived him. La. Civ. Code Ann. art. 2315.2



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Survival Action

A. If a person who has been injured by an offense or quasi offense dies, the right to recover all damages for injury to that person, his property or otherwise, caused by the offense or quasi offense, shall survive for a period of one year from the death of the deceased in favor of:

- (1) The surviving spouse and child or children of the deceased, or either the spouse or the child or children.
- (2) The surviving father and mother of the deceased, or either of them if he left no spouse or child surviving.
- (3) The surviving brothers and sisters of the deceased, or any of them, if he left no spouse, child, or parent surviving.
- (4) The surviving grandfathers and grandmothers of the deceased, or any of them, if he left no spouse, child, parent, or sibling surviving.

B. In addition, the right to recover all damages for injury to the deceased, his property or otherwise, caused by the offense or quasi offense, may be urged by the deceased's succession representative in the absence of any class of beneficiary set out in Paragraph A.

C. The right of action granted under this Article is heritable, but the inheritance of it neither interrupts nor prolongs the prescriptive period defined in this Article.

D. As used in this Article, the words "child", "brother", "sister", "father", "mother", "grandfather", and "grandmother" include a child, brother, sister, father, mother, grandfather, and grandmother by adoption, respectively.

E. For purposes of this Article, a father or mother who has abandoned the deceased during his minority is deemed not to have survived him. La. Civ. Code Ann. art. 2315.1

- The survival action and the wrongful death action are two separate and distinct causes of action that arise at different times, address themselves to the recovery of damages for



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different injuries and losses, and accrue to different tort victims. The survival action comes into existence simultaneously with the tort, permits recovery only for the damages suffered by the victim from the time of injury to the moment of death, and is transmitted to the victim's beneficiaries upon his death. Conversely, the wrongful death action arises only if and when the victim dies and compensates the beneficiaries for their own individual injuries that occur at the moment of the victim's death and thereafter. Boullt v. State Farm Mut. Auto. Ins. Co., 752 So.2d 739, 743-44 (La. 1999).

- The elements of damages for a wrongful death action are loss of love and affection, loss of services, loss of support, medical expenses and funeral expenses. Clark v. G.B. Cooley Service, 813 So.2d 1273 (La. App. 2nd Cir. 2002); Smith v. Louisiana Farm Bureau Cas. Ins. Co., 35 So. 3d 463, 473 (La. App. 2nd Cir. 2010), writ denied, 45 So. 3d 1052 La. 9/17/10,. Damages for wrongful death are intended to compensate the victim's beneficiaries for their compensable injuries following the victim's moment of death.” Id Sims v. Liberty Mut. Ins. Co., 2004-584 La. App. 3 Cir. 3/2/05, 897 So. 2d 834, 845
- A survival action, which compensates for the damages suffered by the victim from the time of injury to the moment of his death, differs from the wrongful death action, which compensates the beneficiaries for their own injuries which they suffer from the moment of the victim's death and thereafter. Warren v. Louisiana Medical Mut. Ins. Co., 21 So.3d 186 (La. 2008); Taylor v. Giddens, 618 So.2d 834 (La. 1993). Damages for a survival action may include the decedent's pre-impact fear. Thomas v. State Farm Ins. Co., 499 So.2d 562 (La. App. 2nd Cir. 1986), writs denied, 501 So.2d 213, 215 (La.1987). If there is even a scintilla of evidence showing any pain or suffering by a victim prior to his death, damages are warranted in a survival action. King v. Brown Development, Inc., 4 So.3d 231 (La. App. 2nd Cir. 2009), writ denied, 6 So.3d 796 (La. 2009).



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- The survival action in a suit resulting from the death of a tort victim includes recovery for pain and suffering, loss of earnings and other damages sustained by the victim up to the moment of death. Damages for pain and suffering are properly awarded if there is a scintilla of evidence of any pre-death pain or suffering by the victim. Sims v. Liberty Mut. Ins. Co., 897 So. 2d 834, 845 (La. App. 3rd Cir. 2005)

Joint and Several Liability:

An obligation is solidary for the obligors when each obligor is liable for the whole performance. A performance rendered by one of the solidary obligors relieves the others of liability toward the obligee. La. Civ. Code Ann. art. 1794

Among solidary obligors, each is liable for his virile portion. If the obligation arises from a contract or quasi-contract, virile portions are equal in the absence of agreement or judgment to the contrary. If the obligation arises from an offense or quasi-offense, a virile portion is proportionate to the fault of each obligor.

A solidary obligor who has rendered the whole performance, though subrogated to the right of the obligee, may claim from the other obligors no more than the virile portion of each. If the circumstances giving rise to the solidary obligation concern only one of the obligors, that obligor is liable for the whole to the other obligors who are then considered only as his sureties. La. Civ. Code Ann. art. 1804.

Mandatory Mediation/Arbitration:

No mandatory mediation/arbitration

Medical Write-off's:



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In a civil case, evidence of furnishing or offering or promising to pay expenses or losses occasioned by an injury to person or damage to property is not admissible to prove liability for the injury or damage nor is it admissible to mitigate, reduce, or avoid liability therefor. This Article does not require the exclusion of such evidence when it is offered solely for another purpose, such as to enforce a contract for payment. La. Code Evid. Ann. art. 409.

Merchant Privilege:

Louisiana Code of Criminal Procedure article 215 provides:

A. (1) A peace officer, merchant, or a specifically authorized employee or agent of a merchant, may use reasonable force to detain a person for questioning on the merchant's premises, for a length of time, not to exceed sixty minutes, unless it is reasonable under the circumstances that the person be detained longer, when he has reasonable cause to believe that the person has committed a theft of goods held for sale by the merchant, regardless of the actual value of the goods. The merchant or his employee or agent may also detain such a person for arrest by a peace officer. The detention shall not constitute an arrest.

(2) A peace officer may, without a warrant, arrest a person when he has reasonable grounds to believe the person has committed a theft of goods held for sale by a merchant, regardless of the actual value of the goods. A complaint made to a peace officer by a merchant or a merchant's employee or agent shall constitute reasonable cause for the officer making the arrest.

B. If a merchant utilizes electronic devices which are designed to detect the unauthorized removal of marked merchandise from the store, and if sufficient notice has been posted to advise the patrons that such a device is being utilized, a signal from the device to the merchant or his employee or agent indicating the removal of specially marked merchandise shall constitute a sufficient basis for reasonable cause to detain the person.



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C. As used in this Article, “reasonable under the circumstances” shall be construed in such a manner so as to include the value of the merchandise in question, the location of the store, the length of time taken for law enforcement personnel to respond, the cooperation of the person detained, and any other relevant circumstances to be considered with respect to the length of time a person is detained.

Method/Mode of Operation:

Retailer operations are specifically governed by La. R. S. 9:2800.6, which places the burden of proof entirely on the customer. That statute provides as follows:

A. A merchant owes a duty to persons who use his premises to exercise reasonable care to keep his aisles, passageways, and floors in a reasonably safe condition. This duty includes a reasonable effort to keep the premises free of any hazardous conditions which reasonably might give rise to damage.

B. In a negligence claim brought against a merchant by a person lawfully on the merchant's premises for damages as a result of an injury, death, or loss sustained because of a fall due to a condition existing in or on a merchant's premises, the claimant shall have the burden of proving, in addition to all other elements of his cause of action, all of the following:

- (1) The condition presented an unreasonable risk of harm to the claimant and that risk of harm was reasonably foreseeable.
- (2) The merchant either created or had actual or constructive notice of the condition which caused the damage, prior to the occurrence.
- (3) The merchant failed to exercise reasonable care. In determining reasonable care, the absence of a written or verbal uniform cleanup or safety procedure is insufficient, alone, to prove failure to exercise reasonable care.

C. Definitions:



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(1) “Constructive notice” means the claimant has proven that the condition existed for such a period of time that it would have been discovered if the merchant had exercised reasonable care. The presence of an employee of the merchant in the vicinity in which the condition exists does not, alone, constitute constructive notice, unless it is shown that the employee knew, or in the exercise of reasonable care should have known, of the condition.

(2) “Merchant” means one whose business is to sell goods, foods, wares, or merchandise at a fixed place of business. For purposes of this Section, a merchant includes an innkeeper with respect to those areas or aspects of the premises which are similar to those of a merchant, including but not limited to shops, restaurants, and lobby areas of or within the hotel, motel, or inn.

D. Nothing herein shall affect any liability which a merchant may have under [Civil Code Arts. 660, 667, 669, 2317, 2322, or 2695](#).

Offers of Judgment/Settlement/PFS:

Louisiana Code of Civil Procedure article 970 provides:

A. At any time more than thirty (30) days before the time specified for the trial of the matter, without any admission of liability, any party may serve upon an adverse party an offer of judgment for the purpose of settling all of the claims between them. The offer of judgment shall be in writing and state that it is made under this Article; specify the total amount of money of the settlement offer; and specify whether that amount is inclusive or exclusive of costs, interest, attorney fees, and any other amount which may be awarded pursuant to statute or rule. Unless accepted, an offer of judgment shall remain confidential between the offeror and offeree. If the adverse party, within ten days after service, serves written notice that the offer is accepted, either party may move for judgment on the offer. The court shall grant such judgment on the motion of either party.



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B. An offer of judgment not accepted shall be deemed withdrawn and evidence of an offer of judgment shall not be admissible except in a proceeding to determine costs pursuant to this Article.

C. If the final judgment obtained by the plaintiff-offeree is at least twenty-five percent less than the amount of the offer of judgment made by the defendant-offeror or if the final judgment obtained against the defendant-offeree is at least twenty-five percent greater than the amount of the offer of judgment made by the plaintiff-offeror, the offeree must pay the offeror's costs, exclusive of attorney fees, incurred after the offer was made, as fixed by the court.

D. The fact that an offer is made but not accepted does not preclude a subsequent offer or a counter offer. When the liability of one party to another has been determined by verdict, order, or judgment, but the amount or extent of the damages remains to be determined by future proceedings, either party may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than thirty days before the start of hearings to determine the amount or extent of damages.

E. For purposes of comparing the amount of money offered in the offer of judgment to the final judgment obtained, which judgment shall take into account any additur or remittitur, the final judgment obtained shall not include any amounts attributable to costs, interest, or attorney fees, or to any other amount which may be awarded pursuant to statute or rule, unless such amount was expressly included in the offer.

F. A judgment granted on a motion for judgment on an offer of judgment is a final judgment when signed by the judge; however, an appeal cannot be taken by a party who has consented to the judgment.

Punitive Damages:



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While it is true that punitive damages must be expressly authorized by statute in Louisiana, at least four articles in the Louisiana Civil Code currently provide for punitive damages, and punitive damages in the form of penalties abound in the Insurance Code in the Louisiana Revised Statutes. Louisiana Civil Code art. 2315.3 provides for punitive damages in the instance of *child pornography*, while La.Civ.Code art. 2315.4 provides for punitive damages when the *defendant is driving intoxicated*, and La.Civ.Code art. 2315.7 provides for punitive damages in the instance of *child molestation*. Additionally and specifically, La.Civ.Code art. 3546, entitled “Punitive Damages,” was enacted in 1991 and provides for an award of punitive damages in Louisiana if the state where the defendant is domiciled awards punitive damages for the injury-causing conduct. It provides that a Louisiana court can award punitive damages if two of three criteria are met: (1) punitive damages are authorized by the state where the injury-causing conduct occurred; and/or (2) punitive damages are authorized by the state where the injury occurred; and/or (3) punitive damages are authorized by the state where the defendant is domiciled. Arabie v. Citgo Petroleum Corp., 49 So. 3d 529, 551 (La. App. 3rd Cir. 2010), writ granted, 56 So. 3d 981 (La. 2011).

Retailer Liability for Defective Products:

A seller who knows that the thing he sells has a defect but omits to declare it, or a seller who declares that the thing has a quality that he knows it does not have, is liable to the buyer for the return of the price with interest from the time it was paid, for the reimbursement of the reasonable expenses occasioned by the sale and those incurred for the preservation of the thing, and also for damages and reasonable attorney fees. If the use made of the thing, or the fruits it might have yielded, were of some value to the buyer, such a seller may be allowed credit for such use or fruits. A seller is deemed to know that the thing he sells has a redhibitory defect when he is a manufacturer of that thing. La. Civ. Code Ann. art. 2545

- When the thing sold has a redhibitory defect, the seller who *knew not* of the vices of the thing is only liable for the return of the price and the expenses of the sale. Gaston v. Bobby



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Johnson Equipment Co., Inc., 771 So.2d 848, 34,028 (La. App. 2nd Cir. 2000), emphasis added.

- The law is clear that a non-manufacturing seller of a defective product is not responsible for damages in tort absent a showing that he knew or should have known the product was defective and failed to S7598d6380ecf1 declare it. Slaid v. Evergreen Indem., Ltd., 32-363 (La.App.2d Cir.10/27/99), 745 So.2d 793 and cases cited therein. Nor is a non-manufacturing seller required to inspect the product prior to sale to determine the possibility of inherent vices or defects. *Id.*; Jackson v. Sears Authorized Retail Dealer Store, 36,166 La. App. 2 Cir. 6/12/02, 821 So. 2d 590, 593

Sealed Container Defense:

Buyer of food and drink in sealed containers is entitled to rely upon fact that manufacturer represents it to be wholesome and pure. Mushatt v. Page Milk Company, 262 So.2d 520 (La. App. 4th Cir. 1972); La. Civ. Code Ann. art. 2315.

A product manufacturer may use the defense that the product was pure and was sold in a sealed container. The buyer of food and drink in sealed containers is entitled to rely on the fact that a manufacturer represents it to be wholesome and pure. Mushatt v. Page Milk Company, 262 So. 2d 520 (La. App. 4th Cir. 1972).

Third Party Criminal Acts:

In general, the duty owed by a business owner to its customers is that of reasonable care. This duty extends to keeping the premises safe from unreasonable risks of harm or warning persons of known dangers. Rodriguez v. New Orleans Public Serv., Inc., 400 So.2d 884, 887 (La. 1981); Owens v. Regional Transit Authority, 559 So.2d 870, 871 (La. App. 4th Cir. 1990). Nevertheless, a business owner *does not normally owe a duty to its patrons to protect them from the criminal activities of third persons*. There is generally no duty to protect others from the criminal activities of



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third persons. Cardella v. Robinson, 903 So. 2d 613, 618 (La. App. 2nd Cir. 2005), writ denied, 918 So.2d 1047 (La. 2006).

However, there are instances when a business establishment will be held liable for injuries caused by the criminal acts of third persons. In Smith v. Walgreens Louisiana Co., Inc., 542 So.2d 766, 768 (La. App. 4th Cir.1989), the Fourth Circuit Court of Appeal found that an owner of a business can be liable if the specific crime was foreseeable and if it was anticipated that the crime would occur at or near the time the incident actually happened. In that case, the victim was abducted from the Walgreens' parking lot. She presented deposition testimony from a security expert who stated that the particular area where the victim was attacked had the most crime of all of downtown New Orleans. Furthermore, the manager of Walgreens admitted in his deposition that this was a high crime area and that his car was vandalized in the same parking lot. The Court, therefore, found that the victim in that case presented adequate evidence to withstand the defendant's motion for summary judgment.

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In Willie v. American Casualty Company, 547 So.2d 1075, 1083 (La. App. 1st Cir. 1989), the First Circuit also recognized the duty of a business to protect patrons from the criminal acts of a third person in situations where the business “had particular knowledge of the impending occurrences of the criminal act.” The victim in that case was abducted from a parking lot and then severely injured when S145408940f421 shot by the offenders. The jury found the crime to be foreseeable because there was no security personnel, inferior lighting was used in the parking lot, and there were abnormally high occurrences of crimes against persons on the premises.

To determine if criminal activity was foreseeable, courts have considered whether similar incidents occurred on the premises. Smith, 542 So.2d at 768. The jurisprudence indicates that this determination is made based on the individual facts of each case. For example, in Romaguera v. Piccadilly Cafeterias, Inc., 648 So.2d 1000 (La. App. 5th Cir.1994), writ denied, 650 So.2d 1183 (La.1995), the court found that one prior incident on the premises was adequate to provide foreseeability.



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Also, in Hanewinckel v. St. Paul's Property & Liability Insurance Co., 611 So.2d 174 (La. App. 5th Cir. 1992), writ denied, 614 So.2d 65 (La.1993), the court found that the criminal acts of a particular person were foreseeable. The defendant, Ochsner Hospital, received information that a particularly described suspicious character was on hospital premises at 4:30 a.m. The court found that this information clearly created a situation where an attack was foreseeable and imminent. Security guards did not take any action based on that information, thus, because an attack did occur, they were negligent by not attempting to prevent it.

Although business owners may not be liable for breach of a duty to warn or to protect, they may be liable under general negligence law for the negligent acts of its employees, through *respondeat superior*, La. C. C. art. 2320; Dye v. Schwegmann Bros. Giant Supermarkets, Inc., 627 So. 2d 688, 694 (La. App. 4th Cir. 1993), writ denied, 634 So.2d 401 (La. 1994). Thus, as to an employer's liability for intentional torts committed by its Sef5133240f401 employee, four factors should be considered to determine course and scope of employment:

1. Whether the tortious act was primarily employment rooted;
2. Whether the violence was reasonably incidental to the performance of the employee's duties;
3. Whether the act occurred on the employer's premises; and
4. Whether it occurred during the hours of employment

Pye v. Insulation Technologies, Inc., 700 So. 2d 892, 894 (La. App. 5th Cir. 1997), writ denied, 706 So. 2d 461 (La. 1997).

Unfair Trade Practices:

Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are declared unlawful by Louisiana Revised Statute § 51:1405. The provisions of the Unfair Trade Practices and Consumer Protection Law shall not apply to:



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(1) Any federally insured financial institution, its subsidiaries, and affiliates or any licensee of the Office of Financial Institutions, its subsidiaries, and affiliates or actions or transactions subject to the jurisdiction of the Louisiana Public Service Commission or other public utility regulatory body, the commissioner of financial institutions, the insurance commissioner, the financial institutions and insurance regulators of other states, or federal banking regulators who possess authority to regulate unfair or deceptive trade practices.

(2) Acts done by the publisher, owner, agent or employee of a newspaper, periodical or radio or television station or other advertising medium in the publication or dissemination of an advertisement when the publisher, owner, agent or employee did not have knowledge of the false, misleading or deceptive character of the advertisement, did not prepare the advertisement and did not have any direct financial interest in the sale or distribution of the advertised product or service.

(3) No seller of any product or service who disseminates any advertisement or promotional material in this state shall be liable under this Chapter if he receives the advertisement or promotional material from a manufacturer, packer, distributor, or other seller from whom he has purchased the product or service unless he refused on the request of the attorney general to provide the name and address of the manufacturer, packer, distributor, or other seller from whom he has purchased the product or service and said seller also agrees to enter into an assurance of voluntary compliance as prescribed by this Chapter from disseminating any such advertisement or promotional material thereafter. This exemption does not in any way limit the right of action any consumer may have under this Chapter.

(4) Any conduct which complies with section 5(a)(1) of the Federal Trade Commission Act [15 U.S.C., 45(a)(1)], as from time to time amended, any rule or regulation promulgated thereunder and any finally adjudicated court decision interpreting the provisions of said Act, rules and regulations. La. Rev. Stat. Ann. § 51:1406



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A. Whenever the attorney general has reason to believe that any person is using, has used, or is about to use any method, act, or practice declared by R.S. 51:1405 to be unlawful, he may bring an action for injunctive relief in the name of the state against such person to restrain and enjoin the use of such method, act, or practice. La. Rev. Stat. Ann. § 51:1407

- Practice is “unfair,” under Louisiana Unfair Trade Practices Act and Consumer Protection Law, when it offends established public policy and when practice is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers. Restivo v. Hanger Prosthetics & Orthotics, Inc., 483 F.Supp.2d 521 (E.D.La.2007), reconsideration denied, 2007 WL 1341506.

Unique Damages Issues:

Louisiana's treatment of punitive damages reflects the unique hybrid of civil and common law traditions that exists in Louisiana law. Unlike most common law jurisdictions, Louisiana, in keeping with civilian traditions, refuses to allow punitive damages except where authorized by statute. However, the analytical framework employed by Louisiana courts in interpreting exemplary awards that are allowed by statute closely follows the traditional common law approach. The foundation of this framework is an extreme deference to the findings of the trier of fact both as to when such damages should be awarded and in deciding the amount of the award. This combination of approaches is the offspring of Louisiana's mixed judicial system.

Unique Procedural Issues:

District courts in Louisiana have unlimited jurisdictional amounts, but a jury trial is not available for any case where the good faith amount in dispute is less than \$50,000.00, exclusive of judicial interest and costs. La. Code Civ. Proc. Ann. art. 1732. That Article provides:



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A trial by jury shall not be available in:

- (1) A suit where the amount of no individual petitioner's cause of action exceeds fifty thousand dollars exclusive of interest and costs.
- (2) A suit on an unconditional obligation to pay a specific sum of money, unless the defense thereto is forgery, fraud, error, want, or failure of consideration.
- (3) A summary, executory, probate, partition, mandamus, habeas corpus, quo warranto, injunction, concursus, workers' compensation, emancipation, tutorship, interdiction, curatorship, filiation, annulment of marriage, or divorce proceeding.
- (4) A proceeding to determine custody, visitation, alimony, or child support.
- (5) A proceeding to review an action by an administrative or municipal body.
- (6) All cases where a jury trial is specifically denied by law.

There are Parish and City Courts in some parishes and cities throughout Louisiana, primarily in metropolitan areas, and these courts are of limited jurisdictional amounts, primarily below \$50,000.00. See La. C. C. P. Art. 4843 for a listing of the various courts and jurisdictional amounts.

Violation of State Building Code:

The public policy of Louisiana is to maintain reasonable standards of construction in buildings and other structures in the state consistent with the public health, safety, and welfare of its citizens. The State Uniform Code is enacted to enable the state of Louisiana to promulgate a state uniform construction code to govern the construction, reconstruction, alteration, and repair of buildings and other structures and the installation of mechanical devices and equipment therein. The state uniform construction code shall establish uniform performance standards providing reasonable safeguards for health, safety, welfare, comfort, and security balanced with affordability for the



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residents of this state who are occupants and users of buildings, and will provide for the use of modern methods, devices, materials, and techniques. The state uniform construction code will encourage the use of construction materials of the greatest durability, lower long-term costs, and provide greater storm resistance.

Courthouse Links:

Court of Appeals

<http://www.la-fcca.org/>

<http://www.lacoa2.org/>

<http://www.la3circuit.org/>

<http://www.la4th.org/>

<http://www.fifthcircuit.org/>

District Courts

<http://www.15thjdc.com/site.php>

<http://www.33jdc.com/>

<http://www.23rdjdc.org/>

<http://www.23rdjdc.org/default.aspx>

<http://www.bienvilleparish.org/clerk/judges2nd.asp>

<http://www.bossierclerk.com/>

<http://www.14jdc.org/>

<http://www.bienvilleparish.org/judges/judges2nd.asp>

<http://www.concordiaclerk.org/>

<http://www.ebrclerkofcourt.org/>

<http://www.bienvilleparish.org/judges/judges2nd.asp>

<http://www.24jdc.us/>

<http://www.15thjdc.com/site.php>



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<http://www.21stjdc.org/>

<http://www.4jdc.com/>

<http://www.10jdc.com/>

<http://www.orleanscdc.com/>

<http://www.4jdc.com/>

<http://www.9thjdc.org/site/Templates/template1.aspx?tabindex=0&tabid=1>

<http://www.judgefernandez.com/>

<http://www.stcharlesgov.net/index.aspx?page=53>

<http://www.21stjdc.org/>

<http://www.23rdjdc.org/default.aspx>

<http://www.21stjdc.org/>

<http://www.15thjdc.com/site.php>

<http://www.vernonclerk.com/judges.htm>

City and Parish Courts of Louisiana

<http://www.cityofbakerla.net/services/citycourt.htm>

<http://brgov.com/dept/citycourt/>

<http://www.bossiercity.org/City-Court/>

<http://www.citycourt.org/>

http://www.tpcg.org/city_court/index.asp

http://www.jpclerkofcourt.us/1stparish_court/Main.asp

http://www.jpclerkofcourt.us/2ndparish_court/Main.asp

<http://www.lccitycourt.org/>

<http://www.mindenusa.com/citygov.htm#court>

<http://www.orleanscdc.com/fccintro.shtm>

<http://www.orleanscdc.com/fccintro.shtm>

<http://www.plaquemine.org/departments/City-Court>

<http://www.shreveportla.gov/citycourt/>

<http://citycourtofslidell.com/>



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<http://www.sulphurcitycourt.com/>

http://www.ci.thibodaux.la.us/departments/city_court/index.asp